

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re)	Case No. 03-00817
)	Chapter 11
HAWAIIAN AIRLINES, INC.,)	
)	
Debtor.)	Re: Docket No. 3444
_____)	

**MEMORANDUM DECISION ESTIMATING
CLAIM NO. 348 OF CHARLES D. BUXMAN**

Charles D. Buxman filed Proof of Claim No. 348, asserting that the debtor, Hawaiian Airlines, Inc., is liable for \$10,000,000 on account of the allegedly “illegal termination” of Mr. Buxman’s employment. The trustee has objected to Mr. Buxman’s claim (docket no. 3444), contending that the claim should be disallowed in its entirety or, alternatively, estimated at \$76,000.00.

Mr. Buxman went to work for Hawaiian Airlines in 1987 as a mechanic. On March 28, 1996, Mr. Buxman was convicted of three counts of sexual assault in the third degree under Haw. Rev. Stat. § 707-732(1). The trustee contends that, after Hawaiian Airlines learned of Mr. Buxman’s conviction in December 2000, it concluded that the conviction made Mr. Buxman ineligible for an “AOA badge,” the identification badge that one must have in order to gain access to the secured area of the airport where Mr. Buxman’s job was performed. Hawaiian Airlines therefore revoked Mr. Buxman’s identification badge and

terminated his employment.

Mr. Buxman sued Hawaiian Airlines in federal district court, alleging that the termination was not really based on his criminal conviction, but rather was retaliation for Mr. Buxman's testimony against Hawaiian Airlines in a coworkers' racial discrimination suit.

In December 2002, Hawaiian Airlines and Mr. Buxman entered into a settlement. Although the complete terms of the settlement are not included in the record of this case, it appears that Hawaiian Airlines agreed to reinstate Mr. Buxman and pay him a certain amount of money if he regained his AOA badge within a specified time period. Unfortunately, the settlement did not end the dispute. The trustee contends that Mr. Buxman did not regain his AOA badge within the time limit. Mr. Buxman argues that Hawaiian Airlines' conduct prevented him from timely regaining the badge.

Hawaiian Airlines commenced this chapter 11 case in April 2003. Mr. Buxman moved for relief from the stay to prosecute his claims in district court. The parties agreed that the stay should be lifted to permit Mr. Buxman to seek reinstatement to his job but not to permit Mr. Buxman to prosecute any claims for monetary relief.

The trustee argues that, because Mr. Buxman did not timely regain his

AOA badge, the settlement agreement bars his claims. Mr. Buxman disagrees. Mr. Buxman has apparently filed a motion for summary judgment in the district court litigation which is set for hearing on February 14, 2005. Although I do not know precisely what Mr. Buxman's motion seeks (since he has provided a copy of only the face sheet of the motion), the motion probably will require the district court to consider the parties' arguments about the terms and enforcement of the settlement agreement. In order to avoid deciding questions in the absence of a complete record and to avoid possible inconsistencies with the district court's decision, I will not decide to what extent Mr. Buxman's claims are viable under non-bankruptcy law.

The trustee's alternative claim for estimation is, however, ripe for decision. Section 502(c) requires the court to estimate "any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case."

Mr. Buxman's claim is "unliquidated" within the meaning of section 502(c). Mr. Buxman's claim consists primarily of noneconomic damages, such as emotional distress, pain, and suffering. Mr. Buxman argues that he is entitled to a jury determination of the amount of these damages. Such a claim is the archetype of an "unliquidated claim."

The liquidation of Mr. Buxman's claim would unduly delay the conclusion of this case. Under the current schedule, acceptances and rejections of a proposed plan are due in mid-December 2004, and the plan confirmation hearing is scheduled for late January 2005, less than ninety days from now. It would be impossible to obtain the jury trial Mr. Buxman seeks within that time. Unless Mr. Buxman's claim is estimated, it may be impossible to determine whether the proposed plan meets the requirements for confirmation, and the pendency of Mr. Buxman's claim would delay the consummation of any confirmed plan.

Section 502(b)(7) makes it easy to estimate Mr. Buxman's claim.

That section provides that the court must disallow

the claim of an employee for damages resulting from the termination of an employment contract [to the extent that] such claim exceeds -

- (A) the compensation provided by such contract, without acceleration, for one year following the earlier of –
 - (i) the date of the filing of the petition; or
 - (ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus
- (B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates

The limitation of section 502(b)(7) applies to employment termination claims

regardless of how long before bankruptcy the termination occurred. Bitters v. Networks Electronic Corp. (In re Networks Electronic Corp.), 195 B.R. 92 (B.A.P. 9th Cir. 1996). I agree with the majority rule that a collective bargaining agreement is an “employment contract” within the meaning of section 502(b)(7). In re Frontier Airlines, Inc., 137 B.R. 811 (D. Colo. 1992). Neither the text of the statute nor its apparent purpose suggest that Congress intended to treat unionized employees differently from nonunion employees.

The trustee calculates, and Mr. Buxman does not deny, that the maximum amount of his allowable claim under section 502(b)(7) is approximately \$76,000. Accordingly, a separate judgment will be entered estimating Mr. Buxman’s claim at \$76,000. This determination is without prejudice to the trustee’s contentions that the claim should be disallowed in whole or in part. The trustee or another party in interest with standing may renew the objection at an appropriate future date.

DATED: Honolulu, Hawaii, November 9, 2004.

 */s/ Robert J. Faris*
United States Bankruptcy Judge